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§ 957.26 Public information.

The Librarian of the Postal Service shall maintain for public inspection in the Library copies of all final decisions. The Recorder maintains the complete official record of every proceeding.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.27 Suspension.

(a) Any firm or individual suspended under chapter 3, section 7 of the Postal Service Purchasing Manual who believes that the suspension has not been in accordance with the provisions thereof, or with applicable laws or regulations, may appeal to the Judicial Officer for a review of the suspension.

(b) Any such appeal shall be addressed to the Judicial Officer through the Vice President who ordered the suspension within 20 days of the date upon which the respondent has been notified of the suspension. Such appeal shall concisely and in the manner of a pleading set forth the grounds upon which the suspension is contested and may be supported by a brief and such evidence as the respondent may desire to submit.

(c) Should the respondent desire oral argument or a hearing before the Judicial Officer in connection with the appeal, application therefor shall be included in the appeal. In the event that the Judicial Officer grants the respondent's application for a hearing the notice of suspension and the appeal shall constitute the pleadings defining the issues therein and the hearing shall be regulated in accordance with the rules in this part concerning debarment proceedings.

(d) The decision of the Judicial Officer in any appeal shall constitute the final agency determination of the issues presented thereby. Either party thereto may, however, file a motion for reconsideration thereof, in accordance with the provisions of § 957.22.

[36 FR 11574, June 16, 1971, as amended at 41 FR 19309, May 12, 1976; 63 FR 66051, Dec. 1, 1998]

§ 957.28 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte

communications are made applicable to proceedings under these rules of practice.

[42 FR 5358, Jan. 28, 1977]

PART 958—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO CIVIL PENALTIES, CLEAN-UP COSTS AND DAMAGES FOR VIOLATION OF HAZARDOUS MATERIAL REGULATIONS

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AUTHORITY: 39 U.S.C. 204; 39 U.S.C. 401; 39 U.S.C. 3001; 39 U.S.C. 3018.

SOURCE: 74 FR 18631, Apr. 24, 2009, unless otherwise noted.

§ 958.1 Purpose.

This part establishes the procedures governing the hearing and appeal rights of any person alleged to be liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

§ 958.2 Definitions.

As used in this part:

(a) *Complaint* refers to the determination by the Determining Official that

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an individual has violated the prohibition against mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

(b) *Initial Decision* refers to the written decision which the Presiding Officer renders.

(c) *Determining Official* refers to the Chief Postal Inspector or designee.

(d) *Judicial Officer* refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or designee within the Judicial Officer Department.

(e) *Party* refers to the Postal Service or the respondent.

(f) *Person* refers to any individual, partnership, corporation, association, or private organization.

(g) *Presiding Officer* refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing.

(h) *Recorder* refers to the Recorder of the Judicial Office of the United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, Virginia 22201-3078.

(i) *Representative* refers to an attorney or other advocate.

(j) *Respondent* refers to any person determined by the Determining Official to be liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

§ 958.3 Petition for hearing.

Within 30 days of being served the Postal Service's Complaint alleging liability under 39 U.S.C. 3018, the respondent may request a hearing by filing a written Hearing Petition with the Recorder. The respondent's Petition must include the following:

(a) The words "Petition for Hearing Related to Prohibitions Regarding the Mailing of Hazardous Material" or other words reasonably identifying it as such;

(b) The name of the respondent as well as his or her work and home addresses, and work and home telephone numbers; and other address and telephone number where the respondent may be contacted about the hearing proceedings;

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(c) The date on which the respondent received the Complaint issued by the Determining Official;

(d) A statement indicating whether the respondent requests an oral hearing or a decision solely on the written record;

(e) If the respondent requests an oral hearing, a statement proposing a city for the hearing site, with justification for holding the hearing in that city, as well as recommended dates for the hearing; and

(f) A statement admitting or denying each of the allegations of liability made in the Complaint, and stating any defense on which the respondent intends to rely.

§ 958.4 Referral of complaint.

(a) If the respondent fails to request a hearing within the specified period, the Determining Official shall transmit the Complaint to the Judicial Officer for referral to a Presiding Officer, who shall issue an Initial Decision based upon the information contained in the Complaint.

(b) If the respondent files a Hearing Petition, the Determining Official, upon receiving a copy of the Petition, shall promptly transmit to the Presiding Officer a copy of the Postal Service's Complaint.

§ 958.5 Scope of hearing; evidentiary standard.

(a) A hearing under this part shall be conducted by the Presiding Officer on the record:

(1) To determine whether the respondent is liable under 39 U.S.C. 3018, and

(2) If so, to determine the amount of any civil penalties, clean-up costs and/or damages to be imposed.

(b) The Postal Service must prove its case against a respondent by a preponderance of the evidence.

(c) The parties may offer for insertion onto the record such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the Presiding Officer in supervising the extent and

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manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 958.6 Notice of docketing and hearing.

(a) Within a reasonable time after receiving the respondent's Hearing Petition and the Complaint, the Presiding Officer shall serve upon the respondent and the Determining Official, a Notice of Docketing and Hearing.

(b) The Notice of Docketing and Hearing required by paragraph (a) of this section may include:

(1) The tentative site, date, and time of the oral hearing, if one is requested;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The nature of the hearing;

(4) The matters of fact and law to be decided;

(5) A description of the procedures governing the conduct of the hearing; and

(6) Such other information as the Presiding Officer deems appropriate.

§ 958.7 Hearing location.

An oral hearing under this part shall be held:

(a) In the judicial district of the United States in which the respondent resides or transacts business;

(b) In the judicial district of the United States in which the incident or incidents occurred upon which the determination of liability under 39 U.S.C. 3018 was made by the Determining Official; or

(c) In such other place as may be determined by the Presiding Officer.

§ 958.8 Rights of parties.

Subject to the sound discretion of the Presiding Officer, acting under § 958.9, parties to a hearing under this part shall have the right:

(a) To be accompanied, represented, and advised, by an attorney or representative of his or her own choosing;

(b) To participate in any conferences held by the Presiding Officer;

(c) To agree to stipulations of fact or law, which shall be made part of the record;

(d) To make opening and closing statements at the oral hearing;

(e) To present oral and documentary evidence relevant to the issues;

(f) To submit rebuttal evidence;

(g) To conduct such cross-examination as may be required for a full and true disclosure of the facts; and

(h) To submit written briefs, proposed findings of fact, and proposed conclusions of law.

§ 958.9 Responsibilities and authority of presiding officer.

(a) The Presiding Officer shall conduct a fair and impartial hearing, avoid unnecessary delay, maintain order, and assure that a record of the proceeding is made.

(b) The Presiding Officer's authority includes, but is not limited to, the following:

(1) Establishing, upon adequate notice to all parties, the date and time of the oral hearing, if any, as well as, in accordance with § 958.7, selecting the hearing site;

(2) Holding conferences, by telephone or in person, to identify or simplify the issues, or to consider other matters that may aid in the expeditious resolution of the proceeding;

(3) Continuing or recessing the hearing in whole or in part for a reasonable period of time;

(4) Administering oaths and affirmations to witnesses;

(5) Ruling on all offers, motions, requests by the parties, and other procedural matters;

(6) Issuing any notices, orders, or memoranda to the parties concerning the proceedings;

(7) Regulating the scope and timing of discovery;

(8) Regulating the course of the hearing and the conduct of the parties and their representatives;

(9) Examining witnesses;

(10) Receiving, ruling on, excluding, or limiting evidence in order to assure that relevant, reliable and probative

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evidence is elicited on the issues in dispute, but irrelevant, immaterial or repetitious evidence is excluded;

(11) Deciding cases, upon motion of a party, in whole or in part by summary judgment where there is no disputed issue of material fact;

(12) Establishing the record in the case; and

(13) Issuing a written Initial Decision containing findings of fact, conclusions of law, and determinations with respect to whether civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018 should be imposed, and if so, the amounts thereof, after taking into account the penalty considerations contained in 39 U.S.C. 3018(e).

§ 958.10 Prehearing conferences.

(a) At a reasonable time after issuing the Notice of Docketing and Hearing, and with adequate notice to the parties, the Presiding Officer may conduct, in person or by telephone, one or more prehearing conferences to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations or admissions of fact or as to the contents and authenticity of documents;

(4) Limitation of the number of witnesses;

(5) Exchange of witness lists, copies of prior statements of witnesses, and copies of hearing exhibits;

(6) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(7) Discovery;

(8) Possible changes in the scheduled oral hearing date, time or site, if requested; and

(9) Any other matters related to the proceeding.

(b) Within a reasonable time after the completion of a prehearing conference, the Presiding Officer shall issue an order detailing all matters agreed upon by the parties, or ordered by the Presiding Officer, at such conference.

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§ 958.11 Respondent's access to information.

Except as provided in this section, after receiving the Notice of Docketing and Hearing the respondent may review and obtain a copy of all relevant and material documents, transcripts, records, and other materials which relate to the determination of liability by the Determining Official under 39 U.S.C. 3018, and all exculpatory information in the possession of the Determining Official relating to liability for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018. The respondent is not entitled to review or obtain a copy of any document, transcript, record, or other material which is privileged under Federal law. The Presiding Officer is authorized to issue orders placing limitations on the scope, method, time and place for accessing this information, and provisions for protecting the secrecy of confidential information or documents.

§ 958.12 Depositions; interrogatories; admission of facts; production and inspection of documents.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any discovery procedure permitted under this part, the Presiding Officer may issue any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents. Each party shall bear its own expenses relating to discovery.

(b) *Depositions.* After the issuance of a Notice of Docketing and Hearing, the parties may mutually agree to, or the Presiding Officer may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for an order

of the Presiding Officer under this paragraph shall specify whether the purpose of the deposition is discovery or for use as evidence.

(1) The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Presiding Officer.

(2) No testimony taken by depositions shall be considered as part of the record in the hearing unless and until such testimony is offered and received into evidence by order of the Presiding Officer. Deposition testimony will not ordinarily be received in evidence if an oral hearing is requested by either party, and the deponent is available to testify personally at the hearing. In such instances, however, deposition testimony may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted for a decision on a written record, the Presiding Officer may, in his or her discretion, receive deposition testimony as evidence in supplementation of that record.

(c) *Interrogatories to parties.* After the issuance of a Notice of Docketing and Hearing, a party may serve on the other party written interrogatories. Within 30 days after service, the party served shall answer each interrogatory separately in writing, signed under oath, or file objections thereto. Upon timely objection by the party, the Presiding Officer will determine the extent to which the interrogatories will be permitted.

(d) *Admission of facts.* After the issuance of a Notice of Docketing and Hearing, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. Upon timely objection by the party, the Presiding Officer will determine the extent to which the request for admission will be permitted. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(e) *Production and inspection of documents.* Upon motion of a party showing good cause therefor, and upon notice, the Presiding Officer may order the

other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery or admissible evidence. If the parties cannot themselves agree thereon, the Presiding Officer shall specify just terms and conditions in making the inspection and taking the copies and photographs.

(f) *Limitations.* A discovery procedure may not be used to reach documents, transcripts, records, or other material which a person is not entitled to review pursuant to § 958.11.

§ 958.13 Sanctions.

(a) *In general.* The Presiding Officer may sanction a person, including any party, attorney or representative, for:

(1) Failing to comply with a lawful order or prescribed procedure;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) *Reasonableness.* Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) *Failure to comply with an order.* When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the Presiding Officer may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit such party from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) *Failure to prosecute or defend.* If a party fails to prosecute or defend an

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action under this part, the Presiding Officer may dismiss the action, or enter an order of default and an Initial Decision.

(e) *Failure to file timely.* The Presiding Officer may refuse to consider any motion or other pleading, report, or response which is not filed in a timely fashion.

§ 958.14 Ex parte communications.

Communications between a Presiding Officer and a party shall not be made on any matter in issue unless on notice and opportunity for all parties to participate. This prohibition does not apply to procedural matters. A memorandum of any communication between the Presiding Officer and a party shall be transmitted by the Presiding Officer to all parties.

§ 958.15 Post-hearing briefs.

Post-hearing briefs and reply briefs may be submitted upon such terms as established by the Presiding Officer at the conclusion of the hearing.

§ 958.16 Transcript of proceedings.

Testimony and argument at oral hearings shall be reported verbatim, unless the Presiding Officer orders otherwise. Transcripts or copies of the proceedings may be obtained by the parties at such rates as may be fixed by contract between the reporter and the Postal Service.

§ 958.17 Initial decision.

(a) After the conclusion of the hearing, and the receipt of briefs, if any, from the parties, the Presiding Officer shall issue a written Initial Decision, including his or her findings and determinations. Such decision shall include the findings of fact and conclusions of law which the Presiding Officer relies upon in determining whether the respondent is liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018, and, if liability is found, shall set forth the amount of any civil penalties, clean-up costs and/or damages imposed.

(b) The Presiding Officer shall promptly send to each party a copy of his or her Initial Decision. A party may, in accordance with § 958.18, appeal

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an adverse Initial Decision to the Judicial Officer. Unless a party timely appeals in accordance with § 958.18, the Presiding Officer's Initial Decision, including the findings and determinations, becomes the final agency decision.

§ 958.18 Appeal of initial decision to Judicial Officer.

(a) *Notice of appeal and supporting brief.* A party may appeal an adverse Initial Decision by filing, within 30 days after the Presiding Officer issues the Initial Decision, a Notice of Appeal with the Recorder. The Judicial Officer may extend the filing period but only if the party files a request for an extension within the initial 30-day period and demonstrates good cause for such extension.

(1) The Notice of Appeal must be accompanied by a written brief specifying the party's exceptions, and any reasons for such exceptions, to the Presiding Officer's Initial Decision.

(2) Within 30 days of receiving the party's brief, the opposing party may file with the Judicial Officer a response to the specified exceptions to the Presiding Officer's Initial Decision.

(b) *Form of review.* Review by the Judicial Officer will be based entirely on the record and written submissions.

(1) The Judicial Officer may affirm, reduce, reverse, or remand any determination about a penalty or assessment by the Presiding Officer.

(2) The Judicial Officer shall not consider any argument or objection that was not raised in the hearing unless the interested party demonstrates that the failure to raise the argument or objection before the Presiding Officer was caused by extraordinary circumstances.

(3) If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence, the Judicial Officer may remand the matter to the Presiding Officer for consideration of such additional evidence.

(c) *Decision of Judicial Officer.* The Judicial Officer shall promptly serve each party to the appeal with a copy of his

or her decision. The decision of the Judicial Officer constitutes final agency action and becomes final and binding on the parties.

§ 958.19 Form and filing of documents.

(a) Every pleading filed in a proceeding under this part must contain a caption setting forth the title of the action, the docket number (after assignment by the Recorder), an accurate designation of the document, and the name, address, and telephone number of the party on whose behalf the paper was filed. It shall also be signed by the party or party representative submitting the document.

(b) The original and three copies of all pleadings and documents in a proceeding conducted under this part shall be filed with the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, Virginia 22201-3078. Normal Recorder business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time. The Recorder will transmit a copy of each document filed to the other party, and the original to the Presiding Officer.

(c) Pleadings or other document transmittals to, or communications with, the Postal Service, other than to the Recorder under paragraph (a) of this section, shall be made through the Determining Official or designated Postal Service attorney. If a notice of appearance by a representative is filed on behalf of the respondent, pleadings or document transmittals to, or communications with, the respondent shall be made through his or her representative.

§ 958.20 Service of notice of docketing and hearing, other documents.

Unless otherwise specified, service of a Notice of Docketing and Hearing or any other document under this part shall be effected by registered or certified mail, return receipt requested, or by personal delivery. In the case of personal service, the person making service shall, if possible, secure from the party or other person sought to be served, or his or her agent, a written acknowledgement of receipt, showing the date and time of such receipt. If the person upon whom service is made

declines to acknowledge receipt, the person effecting service shall execute a statement, indicating the time, place and manner of service, which shall constitute evidence of service.

§ 958.21 Computation of time.

In computing any period of time provided for by this part, or any order issued pursuant to this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day. Except as otherwise provided in these rules or an applicable order, prescribed periods of time are measured in calendar days rather than business days.

§ 958.22 Continuances and extensions.

Continuances and extensions may be granted under these rules for good cause shown.

§ 958.23 Settlement.

Either party may make offers of settlement or proposals of adjustment at any time. The Determining Official has the exclusive authority to compromise or settle any determinations of liability for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018, without the consent of the Presiding Officer or Judicial Officer.

PART 959—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PRIVATE EXPRESS STATUTES

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